

ESTTA Tracking number: **ESTTA767736**

Filing date: **08/30/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	E. & J. Gallo Winery		
Entity	Corporation	Citizenship	CA
Address	600 Yosemite Blvd. Modesto, CA 95354 UNITED STATES		

Attorney information	Michael J. Salvatore Holmes Weinberg, PC 30765 Pacific Coast Highway, Suite 411 Malibu, CA 90265 UNITED STATES hwtrademarks@gmail.com, msalvatore@holmesweinberg.com Phone:310-457-6100
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Applicant Information

Application No	86908449	Publication date	08/02/2016
Opposition Filing Date	08/30/2016	Opposition Period Ends	09/01/2016
Applicant	Gallos Danny Juan, Inc. 500 Carr. 149 Suite 7 Ciales, 00638 PR		

Goods/Services Affected by Opposition


Class 005. First Use: 2015/10/23 First Use In Commerce: 2015/10/23 All goods and services in the class are opposed, namely: Animal feed supplements
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Grounds for Opposition

Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	891339	Application Date	09/17/1969
Registration Date	05/19/1970	Foreign Priority Date	NONE
Word Mark	GALLO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1909/00/00 First Use In Commerce: 1909/00/00 WINES [AND CHAMPAGNES]


U.S. Registration No.	887959	Application Date	01/17/1969
Registration Date	03/17/1970	Foreign Priority Date	NONE
Word Mark	GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1962/11/19 First Use In Commerce: 1968/07/22 PREPARED MEAT PRODUCTS-NAMELY, SALAME, SAUSAGE, MORT-ADELLA, CURED MEATS [, ANDMEAT LOAF] ; AND CHEESE		

U.S. Registration No.	2320063	Application Date	07/25/1997
Registration Date	02/22/2000	Foreign Priority Date	NONE
Word Mark	GALLO		

Design Mark	GALLO
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1988/05/01 First Use In Commerce: 1988/05/01 clothing, namely, T-shirts, sweatshirts, shirts and caps

U.S. Registration No.	3128127	Application Date	04/28/2005
Registration Date	08/08/2006	Foreign Priority Date	NONE
Word Mark	GALLO FAMILY VINEYARDS		
Design Mark			
Description of Mark	The mark consists of the design of the heads of two roosters and the wording "Gallo Family Vineyards".		
Goods/Services	Class 033. First use: First Use: 2005/11/01 First Use In Commerce: 2005/11/01 WINES		

U.S. Registration No.	3382558	Application Date	12/29/2006
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	GALLO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 2006/12/18 First Use In Commerce: 2006/12/18 BEER MUGS, EARTHENWARE MUGS, GLASS MUGS, MUGS, PORCELAIN MUGS Class 025. First use: First Use: 2007/01/15 First Use In Commerce: 2007/01/15 CAPS, [SHIRTS, JACKETS]

Attachments	72338083#TMSN.png(bytes) 72316889#TMSN.png(bytes) 75330379#TMSN.png(bytes) 78618997#TMSN.png(bytes) 77073560#TMSN.png(bytes) 2016.08.30_Notice of Opposition re NUTRI GALLO.pdf(145315 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/MJSalvatore/
Name	Michael J. Salvatore
Date	08/30/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Serial No. 86/908,449

E. & J. Gallo Winery,

Opposer,

v.

Gallos Danny Juan, Inc.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

TO: ASSISTANT COMMISSIONER FOR TRADEMARKS
BOX TTAB –FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Opposer E. & J. Gallo Winery (“Gallo”), a corporation organized and existing under the laws of the State of California, believes that it would be damaged by registration of the above-referenced mark, and hereby opposes the same. As grounds for this Opposition, Gallo respectfully alleges as follows:

1. Opposer Gallo is a corporation organized and existing under the laws of the State of California, having a place of business at 600 Yosemite Blvd., Modesto, California 95354.
2. Gallo is the exclusive owner in the United States of the following federally registered GALLO® marks, and other word and design marks that incorporate the GALLO trademark, and of common law rights therein (collectively, the “GALLO® Marks”):

Reg. Number	Reg. Date	Trademark
0891339	05/19/1970	GALLO (stylized word mark)
0887959	03/17/1970	GALLO and Design

2320063	02/22/2000	GALLO
3128127	08/08/2006	GALLO FAMILY VINEYARDS and Design
3382558	02/12/2008	GALLO and Design

3. These registrations are valid and enforceable, and Gallo's exclusive rights in each of the foregoing registrations are incontestable.

4. Gallo has used the GALLO trademark in the United States since at least the 1950's. For more than fifty years, Gallo has produced, advertised, promoted, distributed and sold goods and services in interstate commerce under its GALLO® Marks.

5. The mark subject to this Opposition is NUTRI GALLO and Design, Serial No. 86/908,449 (the "Opposed Mark") for "Animal feed supplements" in International Class 005.

6. Applicant filed United States Application Serial No. 86/908,449 with the U.S. Patent and Trademark Office on or about February 16, 2016. The Application for the Opposed Mark is based on actual use, with a claimed date of first use of October 23, 2015.

7. Gallo's use and registration of its GALLO® Marks long pre-date the filing date of Applicant's USPTO Application for the Opposed Mark, or Applicant's claimed date of first use of the Opposed Mark.

8. Through extensive advertising, promotion and sales of goods under the GALLO® Marks throughout the United States, the GALLO® Marks have become famous in the United States.

9. Gallo's GALLO® Marks were famous prior to the filing date of Applicant's USPTO Application for the Opposed Mark, or Applicant's claimed date of first use of the Opposed Mark.

10. Due to the similarity between the Opposed Mark and the GALLO® Marks in overall commercial impression, registration of the Opposed Mark is likely to cause dilution to

Gallo's GALLO® Marks, to the injury of Gallo, by lessening the capacity of the GALLO® Marks to identify and distinguish Gallo's goods and services, or otherwise diluting or tarnishing Gallo's famous GALLO® Marks.

11. Based on the foregoing, the grant of a registration for the Opposed Mark as sought in Applicant's USPTO Application for the Opposed Mark should be denied based on a likelihood of dilution of the distinctive quality of Gallo's famous GALLO® Marks, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

12. The registration of the Opposed Mark would be inconsistent with Gallo's rights in its GALLO® Marks and will cause damage to Gallo.

WHEREFORE, Gallo respectfully prays that registration of the Opposed Mark not be permitted.

DATED this 30th Day of August 2016.

Respectfully submitted,

By: /s/ Michael J. Salvatore
Michael J. Salvatore
Steven M. Weinberg
Holmes Weinberg, PC
30765 Pacific Coast Highway, Suite 411
Malibu, CA 90265
310.457.6100
msalvatore@holmesweinberg.com
smweinberg@holmesweinberg.com

Attorneys for Opposer E. & J. Gallo Winery

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing NOTICE OF
OPPOSITION was served by US Priority mail to Applicant's counsel at the following address:

Lizmary Lopez Alvarez
PO Box 8992
San Juan, Puerto Rico 00910

DATED: August 30, 2016

By: /s/ Scott Corburn
Scott Corburn
Paralegal